result could have been reached on other more satisfactory grounds. See 20 HARV. L. REV. 223; 27 *id.* 386. And in general, the courts should be extremely cautious in relying upon a principle so vague, and so likely to breed confusion in the law of corporations. See *Gallagher* v. *Germania Brewing Co.*, 53 Minn. 214, 219. But where the corporate machinery is obviously being used to perpetrate a fraud, and where a just result can be reached on no other theory, it is perfectly justifiable to disregard the fiction. The peculiar interest of the principal case lies in the fact that it appears to be one of the few instances in which a disregard of the fiction is really necessary. It is still barely possible, however, that the same result might have been reached on the ground that by colluding with the grantee to perpetrate his fraud, the corporation had estopped itself from setting up the statute. See *Union Mortgage, Banking & Trust Co.* v. *Peters*, 72 Miss. 1058, 18 So. 497; *Bridges* v. *Stephens*, 132 Mo. 524, 543.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — SUIT IN BEHALF OF CORPORATION: EFFECT OF PRIOR SUIT BY ANOTHER STOCKHOLDER. — The plaintiff brought a shareholder's bill to have a contract between his corporation and a third party set aside as fraudulent. The defendant set up a prior suit by another shareholder in which the agreement had been attacked as voluntary and *ultra vires*. *Held*, that the matter is *res judicata*. *Dana* v. *Morgan*, 219 Fed. 313 (Dist. Ct., S. D., N. Y.).

A shareholder's bill is founded upon the right of the shareholder to compel the corporation to assert some right or defense which it has against the third party. *Hearst* v. *Putnam Mining Co.*, 28 Utah 184, 77 Pac. 753. The corporation is, therefore, a necessary party; and its refusal to sue, or facts disclosing the futility of a demand for suit, must be alleged. *Davenport* v. *Dows*, 18 Wall. (U. S.) 626; *Hawes* v. *Oakland*, 104 U. S. 450; *Mount* v. *Radford Trust Co.*, 93 Va. 427, 25 S. E. 244. Since, in substance, a right of the corporation is in issue, an adjudication on the merits bars a subsequent action either by the corporation or by another shareholder. *Montezuma Cattle Co.* v. *Dake*, 16 Colo. App. 139, 63 Pac. 1058; *Hearst* v. *Putnam Mining Co.*, *supra*; *Alexander* v. *Donohoe*, 143 N. Y. 203, 38 N. E. 263. But if the prior action does not go to the merits, as where the suit is dismissed for failure to allege the refusal of the corporation to sue, a subsequent action can be maintained. *The Telegraph* v. *Lee*, 125 Ia. 17, 98 N. W. 364. The principal case correctly disallows a second action even though relief was asked on a varied ground. See *Fayerweather* v. *Ritch*, 91 Fed. 721, 725. This result, although perhaps occasionally depriving a corporation of a right of action lost through a shareholder's unsuccessful method of presentation, seems justifiable as a deterrent to corporate inaction. It would, of course, not follow were the shareholder suing in his own right. See *Morris* v. *Elyton Land Co.*, 125 Ala. 263, 28 So. 513.

DEATH BY WRONGFUL ACT — DEFENSES TO STATUTORY LIABILITY — RELEASE BY DECEASED. — The plaintiff's husband, who was killed by defendant's negligence, before his death gave a full release of all claims. The widow now sues, under a statute giving the next of kin an action where death is caused by negligence. *Held*, that she may recover. *Rowe* v. *Richards*, 151 N. W. 1001 (S. D.).

For a discussion of the questions raised by this case, see NOTES, p. 802.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — LIABILITY TO WIDOW WHO MARRIED DECEASED AFTER INJURY. — The deceased, after being mortally injured through the defendant's negligence, married the plaintiff who had previously become engaged to him. The plaintiff now sues